

R. Paul Frasier

[illegible]

R. Paul Frasier

<p>5</p> <p>1 R. PAUL FRASIER,</p> <p>2 having been first duly sworn to testify the truth,</p> <p>3 the whole truth, and nothing but the truth, was</p> <p>4 examined and testified as follows:</p> <p>5</p> <p>6 MS. PURACAL: We'll do appearances</p> <p>7 for the record. Janis Puracal for Petitioner</p> <p>8 Nicholas McGuffin?</p> <p>9 MR. REIM: Paul Reim, assistant</p> <p>10 attorney general, representing the superintendent.</p> <p>11 THE WITNESS: Paul Frasier, the</p> <p>12 victim, I guess.</p> <p>13 MS. PURACAL: Hopefully it won't be</p> <p>14 that way.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MS. PURACAL: And then with me today</p> <p>17 is John Comery, research paralegal at the Oregon</p> <p>18 Innocence Project.</p> <p>19</p> <p>20 EXAMINATION</p> <p>21 BY MS. PURACAL:</p> <p>22 Q. Good morning, Mr. Frasier.</p> <p>23 A. Good morning.</p> <p>24 Q. You've already given your name for the</p> <p>25 record. You are the current district attorney for</p>	<p>7</p> <p>1 (Deposition Exhibit No. 1</p> <p>2 marked for identification.)</p> <p>3 BY MS. PURACAL:</p> <p>4 Q. Is this a copy of the subpoena you</p> <p>5 received from my office?</p> <p>6 A. I believe so, yes.</p> <p>7 Q. You appeared today pursuant to that</p> <p>8 subpoena; correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Have you ever testified at a</p> <p>11 deposition before?</p> <p>12 A. I think I did one time. It was over</p> <p>13 the telephone several years ago. So I don't</p> <p>14 remember all the particulars of it, but I believe</p> <p>15 I have once.</p> <p>16 Q. Was that in the context of your work</p> <p>17 as a district attorney or was that in a separate</p> <p>18 context?</p> <p>19 A. Kind of mixed. It involved -- I also</p> <p>20 teach criminal justice classes at the community</p> <p>21 college. And the administrator of the criminal</p> <p>22 justice program was fired by the college, and I</p> <p>23 was a witness into those proceedings when she</p> <p>24 filed a wrongful termination lawsuit.</p> <p>25 Q. And you said that was several years</p>
<p>6</p> <p>1 Coos County?</p> <p>2 A. That's correct.</p> <p>3 Q. How long have you been the district</p> <p>4 attorney?</p> <p>5 A. Was appointed in -- took office</p> <p>6 January 1, 2008. So I've been the DA since that</p> <p>7 time.</p> <p>8 Q. And before 2008, you were?</p> <p>9 A. I was a deputy district attorney --</p> <p>10 well, I came to Coos County in 1990 as the chief</p> <p>11 deputy district attorney. I was moved to the</p> <p>12 narcotics team as their narcotics prosecutor and</p> <p>13 forfeiture counsel. I did that for about seven</p> <p>14 years and then came back to the office as the</p> <p>15 chief deputy. And then I got appointed to be the</p> <p>16 DA.</p> <p>17 So I've been here in Coos County 29</p> <p>18 years almost. I started my career in Josephine</p> <p>19 County in 1984 as a deputy district attorney in</p> <p>20 Josephine County.</p> <p>21 Q. You received from my office a subpoena</p> <p>22 for your deposition.</p> <p>23 MS. PURACAL: And I'm going to ask</p> <p>24 for the court reporter to mark that subpoena as</p> <p>25 Exhibit 1.</p>	<p>8</p> <p>1 ago. Do you remember what year?</p> <p>2 A. 2017, maybe, 2016.</p> <p>3 Q. Did that case go to trial?</p> <p>4 A. No. Well, I don't know. I don't know</p> <p>5 how it concluded. I was not called as a witness.</p> <p>6 I don't know the status. Nobody ever got back to</p> <p>7 me about what happened with the case. As far as I</p> <p>8 know -- for all I know it's still pending.</p> <p>9 Q. Have you ever testified at trial?</p> <p>10 A. In a trial, no. I've been called as a</p> <p>11 witness in -- I can think of two times where that</p> <p>12 occurred where I was called as a witness. Once</p> <p>13 was in -- this would have been back in the late</p> <p>14 '80s. We had an aggravated murder case that</p> <p>15 involved murders in Yamhill County and in</p> <p>16 Josephine County. I was called as a witness in</p> <p>17 Yamhill County by the defense about what our plans</p> <p>18 were in terms of -- there were two</p> <p>19 co-defendants -- whether we were going to try them</p> <p>20 together separately. And there was issues about</p> <p>21 who was going to seek the death penalty, if both</p> <p>22 counties were, that type of thing.</p> <p>23 And for some reason, the defense felt</p> <p>24 they needed to call me as a witness to establish</p> <p>25 what Josephine County was going to do for the</p>

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<p style="text-align: right;">21</p> <p>1 test to do to begin with because I thought of</p> <p>2 degradation and contamination and so forth, so I</p> <p>3 just didn't think we'd find anything. And it</p> <p>4 turns out I was right, but that's a story for</p> <p>5 another day, I guess.</p> <p>6 MS. PURACAL: I'm going to hand you</p> <p>7 a copy of a letter. And I'm going to ask our</p> <p>8 court reporter to mark the letter as Exhibit 2.</p> <p>9 (Deposition Exhibit No. 2</p> <p>10 marked for identification.)</p> <p>11 BY MS. PURACAL:</p> <p>12 Q. Do you recognize that letter?</p> <p>13 A. Yes. It's a letter I wrote.</p> <p>14 Q. This is a letter that you wrote to</p> <p>15 Mr. Reim at the attorney general's office related</p> <p>16 to the post conviction proceedings; correct?</p> <p>17 A. That's correct. My practice is any</p> <p>18 time there's a PCR petition filed on any of our</p> <p>19 cases here in Coos County that we respond to the</p> <p>20 petition and we respond to the person handling the</p> <p>21 petition with any comments we may have. So that's</p> <p>22 my practice. In every case I do that.</p> <p>23 Q. And I think I have maybe 15</p> <p>24 installments of letters. Does that sound about</p> <p>25 right to you?</p>	<p style="text-align: right;">23</p> <p>1 that would run away from home; out of character.</p> <p>2 And the first mistake I thought was</p> <p>3 made was not treating her disappearance seriously</p> <p>4 when it was first reported. Chief Reeves</p> <p>5 basically blew her off. Then -- and I can't</p> <p>6 remember whether it was Thursday or Friday -- the</p> <p>7 chief had found out that Leah and Nick and</p> <p>8 Brent Bartley and his then girlfriend and maybe a</p> <p>9 couple other people had gone up to Brent Bartley's</p> <p>10 grandparents' place before she disappeared on that</p> <p>11 Wednesday for some sort of a party -- a barbecue</p> <p>12 and stuff.</p> <p>13 My recollection is that the chief and</p> <p>14 Dave Hall went up to the grandparents' place --</p> <p>15 they were out of town. They had gone on a</p> <p>16 vacation where they were out of state, if not out</p> <p>17 of country. And they went up there.</p> <p>18 And one of the things that people had</p> <p>19 said that Leah was wearing this white T-shirt.</p> <p>20 The chief kept referring to it as a wife-beater</p> <p>21 T-shirt which I thought was inappropriate, but</p> <p>22 okay. But they described hanging on a railing</p> <p>23 around the deck a similar-type shirt, but they</p> <p>24 left it. It turns out in the end it didn't mean</p> <p>25 anything, but, you know, there's a similar-type</p>
<p style="text-align: right;">22</p> <p>1 A. That sounds about right.</p> <p>2 Q. If you look on page 2 of that letter</p> <p>3 and you go down to the fifth paragraph it starts</p> <p>4 with, "Later that morning."</p> <p>5 A. Yes.</p> <p>6 Q. The first two sentences are, "Later</p> <p>7 that morning Leah's mother reported</p> <p>8 to the police that Leah was missing.</p> <p>9 This began a series of mistakes by the</p> <p>10 Coquille Police Department."</p> <p>11 A. That's correct.</p> <p>12 Q. Can you talk to me about what those</p> <p>13 mistakes were the police made?</p> <p>14 A. Well, there were several mistakes.</p> <p>15 First off, I felt that the chief was not giving</p> <p>16 appropriate attention to Cory Courtright's</p> <p>17 concerns.</p> <p>18 I personally did not know</p> <p>19 Leah Freeman. I live here in Coquille. My kids</p> <p>20 went to high school here in Coquille. If you look</p> <p>21 at the yearbook that freshman year for Leah, my</p> <p>22 daughter's picture is right next to hers. I was</p> <p>23 on the school board for a period of time here in</p> <p>24 Coquille, so I'm familiar with Coquille. And from</p> <p>25 what people were telling me, Leah was not a person</p>	<p style="text-align: right;">24</p> <p>1 shirt, why didn't you seize it? Why didn't you</p> <p>2 take it? I thought that was a mistake.</p> <p>3 He assigned to the -- a case officer,</p> <p>4 Dave Hall. And the reason he assigned</p> <p>5 Dave Hall -- and I don't want to sound overly -- I</p> <p>6 think Dave -- he's now deceased, but I think Dave</p> <p>7 admitted it, Dave had never had any major case</p> <p>8 experience. He'd never worked a murder. He'd</p> <p>9 never worked a major crime. And the chief put him</p> <p>10 in charge primarily because Dave was on light duty</p> <p>11 and hurt his knee. And so it was easier to put</p> <p>12 him on it than to take somebody else. And there</p> <p>13 was -- why are you doing that? You need somebody</p> <p>14 more experienced to be the lead officer.</p> <p>15 Then there was a lady, her name was</p> <p>16 Shelly, less than a year experience, and the chief</p> <p>17 threw her into the mix, having her running around</p> <p>18 doing stuff that she just didn't have the</p> <p>19 experience or training to be doing.</p> <p>20 Q. Is that Shelly Grant? That's the only</p> <p>21 Shelly I'm aware of.</p> <p>22 A. Yeah, I believe so. Shelly Grant. I</p> <p>23 can't point to any mistakes that Shelly made, but</p> <p>24 I thought putting two really, really inexperienced</p> <p>25 people in this type of investigation was not</p>

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<p style="text-align: right;">25</p> <p>1 proper.</p> <p>2 And then there were things that</p> <p>3 happened -- some of the things I didn't really</p> <p>4 find out until later. For example, the</p> <p>5 Nicholas McGuffin interview that Chief Reeves did,</p> <p>6 I believe I knew there was an interview, but I</p> <p>7 didn't know there was a recording, I didn't know</p> <p>8 there was a transcript. I didn't find that out</p> <p>9 until 2009, 2010. I mean, there were things that</p> <p>10 Chief Reeves did that he didn't communicate to us</p> <p>11 that he knew about that he didn't share with the</p> <p>12 rest of the team. And then some of the</p> <p>13 information he gave to us was flat out incorrect.</p> <p>14 He misinterpreted.</p> <p>15 Q. Do you remember anything specific that</p> <p>16 was incorrect or that he misinterpreted?</p> <p>17 A. Yes. The incident with Big John, and</p> <p>18 I forget John's last name for the life of me.</p> <p>19 Q. Are you talking about John Lindegren?</p> <p>20 A. Right. He's kind of a character here</p> <p>21 around Coquille. I just saw him a couple weeks</p> <p>22 ago. We call him Big John because he's like 6'8"</p> <p>23 and 300 pounds all muscle. He's a kind of a</p> <p>24 character.</p> <p>25 But the chief had related to us -- we</p>	<p style="text-align: right;">27</p> <p>1 through -- when we found what the chief had done,</p> <p>2 it was basically when a report came in he threw it</p> <p>3 in a banana box. We found, I think it was five</p> <p>4 banana boxes of reports stacked someplace at</p> <p>5 Coquille PD in no order, no sense of organization,</p> <p>6 whatever.</p> <p>7 So we're going through this, and we</p> <p>8 find the officer's report about the contact with</p> <p>9 Lindegren. And that's where we learn what</p> <p>10 Lindegren had actually said back in 2000, was that</p> <p>11 he had seen Leah and Nick outside of</p> <p>12 Sherri Mitchell's at 9:00; not Leah's house on the</p> <p>13 other side of town, but Sherri Mitchell's place.</p> <p>14 And I said, Well, that's not what the chief told</p> <p>15 us, you know, he told us an entirely different</p> <p>16 story. So we talked to the officer. You wrote</p> <p>17 this report. Was it Mitchell's place or Leah's</p> <p>18 place? Oh, no. He told me Mitchell's place.</p> <p>19 Okay.</p> <p>20 So then we go and talk to him, and</p> <p>21 he's -- Yeah, I saw her outside of Mitchell's</p> <p>22 place. And he talked about right after 9:00.</p> <p>23 Well, how do you know it's after 9:00? He had</p> <p>24 this habit of going over to his sister's house to</p> <p>25 watch Survivor. And he told the story about,</p>
<p style="text-align: right;">26</p> <p>1 had these morning briefings and Chief Reeves would</p> <p>2 just talk and talk and talk. And at one point two</p> <p>3 or three weeks into this I said, Chief, we're not</p> <p>4 accomplishing anything by listening to you talk</p> <p>5 for two hours before we go out and do stuff. Can</p> <p>6 we shorten it up a bit? And he did at my</p> <p>7 suggestion.</p> <p>8 But one of the things he told us was,</p> <p>9 he said -- and I remember this in the meeting, he</p> <p>10 was real clear, he says, Yeah, I talked to</p> <p>11 Big John or somebody -- one of his officers had</p> <p>12 talked to Big John. And the officer had reported</p> <p>13 to him that Big John saw Leah and Nick together</p> <p>14 outside of Leah's house, and he put it around nine</p> <p>15 o'clock.</p> <p>16 And we in the group, including myself,</p> <p>17 immediately said, Well, he's got it wrong, because</p> <p>18 we had sighting other where in town around nine</p> <p>19 o'clock where Leah was supposed to be, whether it</p> <p>20 was at Sherri Mitchell's house or McKay's or what</p> <p>21 was then the credit union or the restaurant,</p> <p>22 whatever. We just immediately discounted it.</p> <p>23 Well, then in 2010, 2011 we find --</p> <p>24 that's the other thing Chief did, he never sent me</p> <p>25 all the reports in this case. When we were going</p>	<p style="text-align: right;">28</p> <p>1 Yeah, I watched Survivor and somebody got voted</p> <p>2 off and I'm on my way home and that's when I see</p> <p>3 them.</p> <p>4 And I'm, at that point in time,</p> <p>5 saying, Okay, guys, I don't think he's giving us a</p> <p>6 straight story. Because my wife's a Survivor fan</p> <p>7 and she watches it almost religiously, and at the</p> <p>8 time it was on Thursday night. I said, Survivor</p> <p>9 is on Thursday night, it's always been on Thursday</p> <p>10 nights, as far as I know, so it can't be Wednesday</p> <p>11 night.</p> <p>12 And they went back and checked, and</p> <p>13 sure enough the first season of Survivor which was</p> <p>14 in 2000 was on Wednesday night. And the episode</p> <p>15 he was talking about turned out to be the episode</p> <p>16 that he had told the officer about back in 2000.</p> <p>17 So that was one thing that clearly</p> <p>18 Chief Reeves had miscommunicated to us.</p> <p>19 Q. Do you remember any others?</p> <p>20 A. I don't remember any others about the</p> <p>21 mistakes he had communicated to us.</p> <p>22 The thing that over -- as the case</p> <p>23 went cold, one of the things that bothered me was</p> <p>24 whenever I would try to talk to him about, Hey,</p> <p>25 let's get together and compare notes. I've</p>

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<p style="text-align: right;">33</p> <p>1 Q. That polygraph report, where did you</p> <p>2 look for that?</p> <p>3 A. Well, I went through the scientific</p> <p>4 evidence binder, that's where I looked for it.</p> <p>5 And then I have -- the reports in my binders are</p> <p>6 categorized by officer, and I looked through</p> <p>7 Kip Oswald's reports and I didn't see it there. I</p> <p>8 don't know if I went back and looked at Ranger's</p> <p>9 stuff or not, Detective Ranger from the state</p> <p>10 police. He was the polygrapher at that time for</p> <p>11 the state police.</p> <p>12 I don't recall if I went back and</p> <p>13 looked through Ranger's materials or not.</p> <p>14 Q. Did Kip Oswald have kind of personnel</p> <p>15 file it might have ended up in?</p> <p>16 A. I don't know. I'm sure he had a</p> <p>17 personnel file at the sheriff's office. He</p> <p>18 retired from the sheriff's office and went to work</p> <p>19 for North Bend PD. And then after the Freeman</p> <p>20 case had been concluded, a couple years after</p> <p>21 that, you might want to look at Kip's personnel</p> <p>22 file there at North Bend. He was terminated by</p> <p>23 North Bend, and I believe they terminated him over</p> <p>24 some issues that he had with him telling the truth</p> <p>25 about whether or not he had been given a doctor's</p>	<p style="text-align: right;">35</p> <p>1 was at Coquille PD. I didn't know about these</p> <p>2 other reports and there was pieces of evidence</p> <p>3 they had and so forth.</p> <p>4 Q. So am I accurate when I'm thinking</p> <p>5 that the trail had kind of gone cold --</p> <p>6 A. Yes.</p> <p>7 Q. -- during that period of time?</p> <p>8 A. Yes.</p> <p>9 Q. By the time you get to trial in 2010,</p> <p>10 2011, did you believe that the case had been fully</p> <p>11 prepared for trial?</p> <p>12 A. I did, yes.</p> <p>13 Q. Who prepared it for trial?</p> <p>14 A. Well, I mean, for what happened in the</p> <p>15 courtroom, is that what you're asking?</p> <p>16 Q. Correct.</p> <p>17 A. I did.</p> <p>18 Q. Did you have any help with that?</p> <p>19 A. My chief deputy at the time,</p> <p>20 Erica Soublet, assisted me at trial. She was</p> <p>21 co-counsel with me at trial. But the majority of</p> <p>22 the trial prep, getting it ready for trial, was</p> <p>23 done by me.</p> <p>24 Q. Did you believe that you had done all</p> <p>25 the investigation you needed to do to prepare it</p>
<p style="text-align: right;">34</p> <p>1 release to come back to work type of thing. So he</p> <p>2 was terminated. I know he was terminated or asked</p> <p>3 to resign, but I don't know all of the specifics.</p> <p>4 I don't think -- if there is a</p> <p>5 polygraph report in a file, it wouldn't be at</p> <p>6 North Bend. It would be at the sheriff's office.</p> <p>7 Q. At Coos County Sheriff's Office?</p> <p>8 A. Right.</p> <p>9 Q. So going back to the police report we</p> <p>10 were talking about and that gap in time from 2001</p> <p>11 and 2002 to 2008, you don't recall any</p> <p>12 investigation in that period of time?</p> <p>13 A. Well, there was a couple things that</p> <p>14 popped up here and there. There was something</p> <p>15 about -- I can't remember. We got something from</p> <p>16 Bend OSP about somebody up there spouting off</p> <p>17 knowing something about Leah Freeman, and we</p> <p>18 looked into that and it didn't seem to go</p> <p>19 anywhere. There were occasionally -- I'm thinking</p> <p>20 like once every two or three years there would be</p> <p>21 something that popped up like that, but we would</p> <p>22 look at it and nothing really came out of it.</p> <p>23 Again, I'm looking at this stuff kind</p> <p>24 of from an incomplete standpoint because during</p> <p>25 that time period I didn't know a lot of stuff that</p>	<p style="text-align: right;">36</p> <p>1 for trial?</p> <p>2 A. Yes.</p> <p>3 Q. Did you believe that the facts had</p> <p>4 been fully developed for trial?</p> <p>5 A. Yes.</p> <p>6 Q. Let's talk about what you did to</p> <p>7 prepare for trial.</p> <p>8 A. Okay.</p> <p>9 Q. Can you give me an overview of what</p> <p>10 you did?</p> <p>11 A. Well, I think -- well, I think we</p> <p>12 got -- to overall prepare for trial, I think we</p> <p>13 probably need to back up to how the case got</p> <p>14 reactivated, so to speak, because that's probably</p> <p>15 where it started.</p> <p>16 After I became DA January 1, 2008, and</p> <p>17 I stood for election in May and got elected the</p> <p>18 first time in May. I want to say it was June,</p> <p>19 July Chief Reeves announced his retirement, and</p> <p>20 Coquille PD, the City of Coquille, decided to do a</p> <p>21 nationwide search for a new police chief.</p> <p>22 To be candid, the police in Coquille</p> <p>23 at that time in 2008 had a pretty bad reputation.</p> <p>24 They were seen by a lot of citizens as being</p> <p>25 overly aggressive, rude, obnoxious, lots of</p>

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<p style="text-align: right;">37</p> <p>1 complaints. And the city manager at the time 2 wanted to change that and so they did this 3 nationwide search. 4 They came up with five candidates. 5 And they had an open house at the community 6 center, which I went to, and I spoke to all five 7 candidates. I indicated to them my belief that -- 8 on the Leah Freeman case that Chief Reeves had 9 been dragging his feet for whatever reason, didn't 10 want to be bothered with the case anymore, and I 11 said, I think we need to take a hard look at it. 12 And I asked each one of the five if they would be 13 willing if they became chief. And they all seemed 14 to have done their homework and knew about the 15 case before I talked to them. I said, Would you 16 guys be willing to work with me in reopening it 17 and see what we have? And they all five agreed. 18 I was on the interview panel for the five 19 finalists, which led to Chief Daniels. 20 So after Chief Daniels had been on 21 board, the first thing we did once he came on 22 board -- and it probably was two or three or four 23 months after he came on board -- was, okay, where 24 are the reports? That was the first thing, is 25 getting everything organized.</p>	<p style="text-align: right;">39</p> <p>1 suspect, but who are the other people we need to 2 look at? Go through it and tell me what you 3 think. So they went through and looked at it. 4 And I can't recall off the top of my head anything 5 specific that they recommended, but they had some 6 recommendations. We kept this all quiet. We 7 didn't tell anybody we were doing this. 8 Then we -- like I said, we're looking 9 at the evidence. That's when I found out that we 10 didn't have Leah's clothes or the shoes, they were 11 still in England. Good Lord. Nobody had 12 requested that they be sent back. And I'm 13 thinking, Oh, my gosh. So we got ahold of that 14 lab in England, found out they still had them, and 15 had them sent back. 16 Now, in terms -- the other thing I did 17 was -- is the grand jury that we conducted in 18 2010. I looked at that as a very important 19 preparation tool because we had -- and 20 Chief Daniels disagreed with me on this approach 21 and actually tried to -- he had people come and 22 try to talk me out of it. 23 But my approach was, Look, we've got 24 people out there saying Leah was hit by a car, 25 we've got people out there saying she was held</p>
<p style="text-align: right;">38</p> <p>1 The second thing would have been, 2 Okay, what's the evidence? What physical evidence 3 do we have? 4 That's when we found things like the 5 recording of Nicholas McGuffin's interview the 6 Friday after she disappeared. We didn't know it 7 had been recorded. There's a tape. And it's on 8 an old DUII tape that had been recorded over, you 9 know, and it's fragile. And I said, We got to get 10 that over and get it converted to digital so we 11 don't lose that, and then we found a transcript 12 that we didn't know about. 13 So then we're going through the 14 physical evidence and we found out we had Leah's 15 diaries. I didn't know we had Leah's diaries. So 16 part of that was -- I had the diaries copied and I 17 read all the diaries. Reading all the police 18 reports. I read them all. 19 We discovered in 2010 or 2009 -- well, 20 one of the things we did once the things were 21 organized, then we did this under wraps, I brought 22 in a bunch of retired homicide investigators, I 23 made them kind of special DA investigators, if you 24 will, and I said, Go through this stuff and tell 25 me where we need to go. Obviously, Nick is a</p>	<p style="text-align: right;">40</p> <p>1 hostage at the scout cabin. We need to bring in 2 all these people and find out, okay, what do you 3 know about this? We need to eliminate -- I 4 shouldn't say -- we need to find out what the 5 truth is. Is there some truth to these rumors? 6 If so, we need to figure it out. 7 That's why the grand jury, they called 8 110 witnesses over several days, spaced out over 9 several weeks -- I'm trying to find out, okay, did 10 she get hit by a car, was she held captive, 11 whatever, what do these people know. And every 12 time we tried to run down those rumors, it was, 13 Well, that's what I heard on the street. Well, 14 who told you this? Then we go to that person, 15 Well, who told you that? Well, that's what I 16 heard. You know, we never were able to come to 17 anyone that had any firsthand knowledge about any 18 of these doggone rumors floating around town. And 19 that was a big preparation, and so I had all of 20 those materials. 21 And so then getting ready for trial it 22 was a matter of, okay, who do I want to testify, 23 what do I want to have them testify to, picking 24 out my witnesses, picking out the exhibits and so 25 forth. Okay, what are the questions I want to ask</p>

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<p style="text-align: right;">41</p> <p>1 these people and so forth.</p> <p>2 Q. You talked about having reviewed all</p> <p>3 of the police reports?</p> <p>4 A. Right.</p> <p>5 Q. When I think of police reports I also</p> <p>6 think of interview reports. Are you considering</p> <p>7 the interview reports as well?</p> <p>8 A. Yes. Transcripts of interviews,</p> <p>9 reviewed all of those.</p> <p>10 Q. What about lab reports?</p> <p>11 A. Lab reports also.</p> <p>12 Q. From OSP lab?</p> <p>13 A. Right.</p> <p>14 Q. From the England lab?</p> <p>15 A. Right.</p> <p>16 Q. I believe you also had Microtrace?</p> <p>17 A. Microtrace, yes.</p> <p>18 Q. Did you review the entire file?</p> <p>19 A. When the McCreas asked for the bench</p> <p>20 files, I did not review the bench file stuff,</p> <p>21 especially the DNA stuff because I have no clue</p> <p>22 what all those graphs and notes -- I'm not an</p> <p>23 expert at it. I don't know what those things</p> <p>24 mean. They wanted it, I got it for them. I don't</p> <p>25 recall going through the lab or the bench notes.</p>	<p style="text-align: right;">43</p> <p>1 don't remember how it came about, but we reached</p> <p>2 an agreement that in lieu of having the experts</p> <p>3 come down and testify, we would rely upon the</p> <p>4 reports. And my recollection is we agreed to</p> <p>5 stipulate to the reports being entered as</p> <p>6 evidence.</p> <p>7 And the purpose of Kathy Wilcox was to</p> <p>8 explain what the reports said. I wasn't calling</p> <p>9 her as an expert in DNA. I was calling her as --</p> <p>10 well, she did do work on the case, she had</p> <p>11 examined Leah's clothes and so forth, so I did</p> <p>12 have her as a fact witness in terms of what she</p> <p>13 actually did on the case. And then the second</p> <p>14 part was, okay, we've got these reports. Can you</p> <p>15 explain to the jury what these reports mean. And</p> <p>16 that's why -- I wasn't calling her as an expert in</p> <p>17 DNA. I was asking her to explain.</p> <p>18 And that was an agreement that we had</p> <p>19 reached with the McCreas because, otherwise,</p> <p>20 normally you wouldn't be able to do that. In a</p> <p>21 trial you would have to call the experts and have</p> <p>22 them explain everything. That was an agreement</p> <p>23 that we had reached as to how the trial would be</p> <p>24 conducted.</p> <p>25 Q. So did you talk with Ms. Wilcox in</p>
<p style="text-align: right;">42</p> <p>1 No, I wouldn't have known.</p> <p>2 Q. Any other part of the file that you</p> <p>3 didn't review?</p> <p>4 A. No. That would be the only part,</p> <p>5 would be the stuff that I have no expertise in</p> <p>6 trying to figure out what it means. I wouldn't</p> <p>7 know. But everything else -- I would have</p> <p>8 included medical records that we got for Leah and</p> <p>9 so forth.</p> <p>10 Q. So when we talk about the bench notes</p> <p>11 for the DNA, and you say you weren't an expert on</p> <p>12 that --</p> <p>13 A. Right.</p> <p>14 Q. -- did you rely on your experts to be</p> <p>15 your eyes and ears on the DNA?</p> <p>16 A. Yes.</p> <p>17 Q. And your experts on that was</p> <p>18 Kathy Wilcox for trial?</p> <p>19 A. Well, that was -- what we did was --</p> <p>20 at trial was -- the question arose, and I put this</p> <p>21 to the McCreas, Do we want to call the DNA people?</p> <p>22 Do you want me to call these people, because my</p> <p>23 plan had been -- was to call the people that had</p> <p>24 done the DNA testing.</p> <p>25 And I don't know how it came about, I</p>	<p style="text-align: right;">44</p> <p>1 advance of trial about what was in those reports?</p> <p>2 A. I gave her copies. She had access to</p> <p>3 the reports. I showed her the reports. I said,</p> <p>4 Kathy, I'm going to ask you to explain what the</p> <p>5 reports mean. And I don't know -- I had pretrial</p> <p>6 prep with every -- just about every witness, where</p> <p>7 I sat down and said, Okay, this is the questions</p> <p>8 I'm going to go ask you, and so forth. And I know</p> <p>9 I sat down with Kathy. But I said, All I'm going</p> <p>10 to ask you to do is explain what they mean. I</p> <p>11 don't believe they went any further than that.</p> <p>12 Q. Did you sit down with any other DNA</p> <p>13 experts in advance of trial?</p> <p>14 A. No.</p> <p>15 Q. You said that you had met with almost</p> <p>16 all of the witnesses pretrial.</p> <p>17 A. Yes.</p> <p>18 Q. Are there specific witnesses you have</p> <p>19 in mind that you didn't meet with?</p> <p>20 A. Well, I had listed on my witness list</p> <p>21 Mr. McGuffin's parents and Mr. McGuffin's</p> <p>22 ex-girlfriend as potential witnesses.</p> <p>23 I didn't meet with them because, A, my</p> <p>24 first reaction was they wouldn't meet with me,</p> <p>25 they wouldn't agree to do it. I mean, I didn't</p>

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<p style="text-align: right;">85</p> <p>1 that to include an aider, abettor, or</p> <p>2 co-conspirator.</p> <p>3 A. That's correct. I did not ask them to</p> <p>4 consider that at all.</p> <p>5 Frankly, what I told them to do is,</p> <p>6 You've heard everything, you have heard about all</p> <p>7 these rumors, and I want you to tell me what you</p> <p>8 think, if you think an indictment should be</p> <p>9 issued. I left it up to them to decide whether or</p> <p>10 not an indictment should be issued and against</p> <p>11 who, because, frankly, what I wanted at that point</p> <p>12 was -- is if the evidence about all this other</p> <p>13 stuff going on -- that's why I presented it to</p> <p>14 them, so that they would know about all these</p> <p>15 other potential suspects and this and that and the</p> <p>16 other. I wanted them to tell me who they thought</p> <p>17 did it and if that person should be indicted. So</p> <p>18 I did not go in there advocating that they should</p> <p>19 indict Mr. McGuffin. I let them decide what to</p> <p>20 do.</p> <p>21 Q. Did you tell them your theory about</p> <p>22 Mr. McGuffin?</p> <p>23 A. Did I argue the case? No, I don't</p> <p>24 believe I did. I said, You've heard everything.</p> <p>25 I need you guys to decide what you think needs to</p>	<p style="text-align: right;">87</p> <p>1 whose shoes are these? Are these her shoes or</p> <p>2 not. That's what we wanted to know.</p> <p>3 Q. Did that intent change at any point in</p> <p>4 time?</p> <p>5 A. Once they came back that there was</p> <p>6 blood on the bottom of the one shoe, I said, Okay,</p> <p>7 we need to figure out who that blood belongs to,</p> <p>8 because at the time I didn't know who it belonged</p> <p>9 to. It could be the potential suspect, it could</p> <p>10 be Leah's, I didn't know so we needed to get that</p> <p>11 test.</p> <p>12 Q. Were you looking for any kind of</p> <p>13 perpetrator DNA on those shoes at the time?</p> <p>14 A. I said, We need to find out -- now,</p> <p>15 see, back in 2000, again, touch DNA was in its</p> <p>16 infancy, and I can't even recall if I knew about</p> <p>17 touch DNA in 2000. I said, We need to make sure</p> <p>18 these are Leah's shoes, and we need to find out</p> <p>19 who that blood belongs to. That was my</p> <p>20 recollection of what we needed to do with that</p> <p>21 testing.</p> <p>22 Q. And then we talked a little bit about</p> <p>23 the England lab and that it was your boss</p> <p>24 Mr. Burgett --</p> <p>25 A. Burgett.</p>
<p style="text-align: right;">86</p> <p>1 be done.</p> <p>2 Q. What about at trial, did you argue to</p> <p>3 the jury or do you believe that you argued to the</p> <p>4 jury a theory of accomplice liability?</p> <p>5 A. No. I did not.</p> <p>6 Q. Earlier you mentioned that you had</p> <p>7 made the suggestion that the shoes be tested for</p> <p>8 DNA. And you said that you wanted them to be</p> <p>9 tested to determine whether they were</p> <p>10 Ms. Freeman's shoes.</p> <p>11 A. That's correct.</p> <p>12 Q. Were you looking for anything else in</p> <p>13 that testing process?</p> <p>14 A. At the time that I made the</p> <p>15 suggestion, I don't believe I knew that there was</p> <p>16 blood on the bottom of that shoe. I don't believe</p> <p>17 I was aware of the blood on the bottom of the shoe</p> <p>18 until after Kathy Wilcox told me about it. My</p> <p>19 intent at that time was we need to figure out are</p> <p>20 these in fact Leah Freeman's shoes. So that's</p> <p>21 where we went and got the standards from her mom</p> <p>22 and dad, and then we also got something off her</p> <p>23 hairbrush and her toothbrush to confirm that those</p> <p>24 shoes were, in fact, hers.</p> <p>25 That was my intent at the time, was</p>	<p style="text-align: right;">88</p> <p>1 Q. My apologies -- that it was his</p> <p>2 decision to involve the lab in England.</p> <p>3 A. That's correct.</p> <p>4 Q. Did you distrust that lab?</p> <p>5 A. No, I didn't distrust the lab. I</p> <p>6 didn't know if their procedure was going to be</p> <p>7 admissible because it was never really fully</p> <p>8 explained to me by Mr. Burgett or the other people</p> <p>9 what this new process was.</p> <p>10 And I said, First of all, are we going</p> <p>11 to be able -- if it finds something, are we going</p> <p>12 to be able to use it, because I didn't know --</p> <p>13 because we would have to go through -- whatever</p> <p>14 this new process was, we would have to go through</p> <p>15 Brown/O'Key analysis about whether that would be</p> <p>16 admissible, and I didn't know if we would be able</p> <p>17 to do that. I didn't know enough about the</p> <p>18 process.</p> <p>19 Secondly, I didn't think -- because</p> <p>20 Mr. Burgett was, Well, maybe we'll get</p> <p>21 Nick McGuffin's DNA on the pants, or on the</p> <p>22 zipper, I think is one of the things he said. I</p> <p>23 said, Well, what's that going to tell us? They're</p> <p>24 boyfriend/girlfriend. They're having sex. That's</p> <p>25 not going to tell us anything. And then I said</p>

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<p style="text-align: right;">161</p> <p>1 and come back to me and tell me whether they are 2 still on the suspect list or they have been 3 eliminated by some reason.</p> <p>4 The other thing I did was the grand 5 jury -- Chief Daniels only wanted me to present 6 stuff that showed Nick's guilt. He wanted me to 7 go in and do a grand jury basically in one day or 8 one afternoon and get an indictment on Nick. I 9 told him no.</p> <p>10 That was not a popular decision with 11 him. In fact, he had people come talk to me, and 12 one of them was an idiot from the Vidocq Society, 13 D-I-V-O-Q [sic], trying to get me to change my 14 mind. And I refused to do that. I said, We have 15 to run down in grand jury every last one of these 16 rumors and potential suspects. And so that's why 17 there's 110, 120 people that were interviewed or 18 questioned in front of the grand jury. I felt we 19 needed to do a complete and total investigation.</p> <p>20 Q. Okay. You've seen some exhibits today 21 of various other people. You've heard about the 22 fellow who may be in fact Charity Kinsey.</p> <p>23 A. Uh-huh.</p> <p>24 Q. Was there a discussion during trial 25 about evidence that the defense was going to be</p>	<p style="text-align: right;">163</p> <p>1 that are presented today about some fellow driving 2 around in a gray Cadillac or some fellow who 3 attacked Charity Kinsey, would these have been 4 people that you would have objected to being 5 brought up as potential suspects during trial?</p> <p>6 A. Yes.</p> <p>7 Q. Based on that ruling?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. There is a claim that -- when I 10 look at this petition, you talked about bench 11 notes, giving bench notes to the McCreas. What 12 bench notes did you give to them?</p> <p>13 A. My recollection is they called me -- 14 my practice is generally not to get the bench 15 notes unless the defense asks for it, primarily 16 because they're so voluminous and there is a cost 17 associated with the state police in producing 18 them. And they won't charge me for them, but 19 there is a cost to the State in producing these. 20 So unless I'm asked to produce them, I generally 21 don't, unless I have an independent reason myself, 22 and I can't recall a case where I've done that 23 other than there was one case I anticipated they 24 were going to do it so I asked for them, but 25 anyway.</p>
<p style="text-align: right;">162</p> <p>1 able to bring in about other potential suspects? 2 Do you remember having a discussion about that 3 with the Court?</p> <p>4 A. I filed a motion pretrial, and I 5 called it a motion in limine, and I forgot which 6 number I called it, motion in limine two or 7 something along that line. And my reasoning 8 was -- and I listed several people in there, 9 Alicia Michaud, there was several people I listed, 10 and I said, Look, there's no credible evidence, no 11 admissible evidence to support that these people 12 are suspects and I want to keep it out. Unless 13 you got something that ties into the crime, we 14 shouldn't be going down that rabbit hole.</p> <p>15 And so we had a hearing on it.</p> <p>16 Judge Barron ruled that while he wouldn't keep -- 17 while he wouldn't just give a blanket no, if the 18 defense wanted to go down that route they would 19 have to demonstrate admissible evidence that would 20 tie that potentially to Leah's death. That's my 21 understanding of his ruling. He didn't foreclose 22 them from doing it, but they would have to produce 23 more than, This guy's a suspect. They would have 24 to tie something to it.</p> <p>25 Q. Okay. When we see in these exhibits</p>	<p style="text-align: right;">164</p> <p>1 My recollection was I was asked to get 2 the bench notes for the 2000 through 2001, 2003 3 testing, so I got those bench notes and I gave 4 them to the defense. I don't recall ever being 5 asked to get the bench notes for the testing that 6 was done in 2008, 2009, 2010, and I do not believe 7 I requested those bench notes.</p> <p>8 Q. I'm looking at paragraph 10, sub 2 and 9 3, and that's on page 18 of the fourth amended 10 petition. Look at 2 and 3. Do you know if you 11 provided the complete bench notes from lab 12 personnel and the complete records of lab work 13 including communication logs from OSP crime lab 14 and the file of Microtrace?</p> <p>15 A. I did not get the complete records of 16 the lab work from the testing that was done after 17 the case was reopened because I do not recall 18 being asked to get those.</p> <p>19 Q. Okay.</p> <p>20 A. And I did not request the file from 21 Microtrace because I was not requested to do so.</p> <p>22 Q. Very good.</p> <p>23 Had that been requested would you have 24 done it?</p> <p>25 A. Yes.</p>

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1 STATE OF OREGON.)
2 County of Douglas) ss.
3

4 I, Denise C. Zito Smith, CSR, a Certified
5 Shorthand Reporter for the State of Oregon, hereby
6 certify that the witness was sworn and the
7 transcript is a true record of the testimony given
8 by the witness; that at said time and place I
9 reported by stenotype all testimony and other oral
10 proceedings had in the foregoing matter; that the
11 foregoing transcript consisting of 204 pages
12 contains a full, true and correct transcript of
13 said proceedings reported by me to the best of my
14 ability on said date.

15 If any of the parties or the witness
16 requested review of the transcript at the time of
17 the proceedings, such correction pages are
18 included.

19 IN WITNESS WHEREOF, I have set my hand this
20 14th day of June 2019, in the City of Canyonville,
21 County of Douglas, State of Oregon.

22

23 *Denise C. Zito Smith*

24 _____
25 Denise C. Zito Smith
 Oregon CSR No. 01-0375
 Expires 9/30/2021

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